IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9737 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIRACHAND TRIBHOVANDAS HAPANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9737 of 1999

MR ANSHIN H DESAI for Petitioner No. 1

MR KP RAVAL, AGP for Respondent No. 1

MR PV HATHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/08/2004

ORAL JUDGEMENT

1. The petitioner, who is a senior citizen, has

approached this Court challenging the order of the State Government dated 30.3.1999 which was passed in utter disregard of the order passed by this Court in Special Civil Application No.6972 of 1985.

2.1. It is the case of the petitioner that by the Gujarat Panchayat Service (Pension) Rules, 1976, which were enacted on 09.01.1976, the pension, gratuity and other retirement benefits have been extended to such of the panchayat servants who belonged to the Superior Panchayat Services, or, as the case may be, to Inferior Panchayat services and also to the District Cadre or, as the case may be, the Taluka Cadre on and with effect from 01.04.1963 in cases of all districts.

2.2. These benefits are to be regulated, inter alia, in accordance with the revised Pension Rules 1950, as amended from time to time. It was sought to be contended by the State Government that these Rules do not apply to the staff borne on the Local Cadre of the Panchayat Service and that, therefore, those benefits cannot be claimed by ex-municipal employees such as the petitioner.

2.3. It is the case of the petitioner that, however, this Court in the judgment referred to above held that there has been unfair discrimination between the employees similarly situated in respect of the benefit of pay revision and other benefits. It was held that in the light of pronouncements in Shukla's case and Shamaji Karsan's case, Panchayat Service constituted under the Act is a State Service and the State is the master and each and every officer or servant employed in the Panchayat Service is the servant of the State and not of the Panchayat in which he may be serving for the time-being.

2.4. It was held that such a single service has been constituted with the end in view of bringing about uniform scales of pay and uniform conditions of service for persons employed in the discharge of functions and duties of Panchayats, irrespective of the different sources from which such persons were drawn and the widely differing scales of pay and conditions of service applicable to them before their allocation to the Panchayat Service.

3.1. Mr.Desai for the petitioner submitted that the petitioner is aged about 75 years and he had retired from Mendarada Gram Panchayat on 30.1.1984. He submitted that in view of the judgment of the Apex Court in the case of State of Gujarat and another Vs. Raman Lal Keshav Lal

Soni and others, reported in AIR 1984 SC 161, which has confirmed the judgment of this Court reported in AIR 1977 Guj. 76. In paras 31 and 32, the Apex Court has observed as under.:

"31. We are, therefore, of the view that the Panchayat Service constituted under Section 203 of the Gujarat Panchayats Act is a civil service of the State and that the members of the service are Government servants. This very question had been decided by the High Court Gujarat more than 15 years back in G.L.Shukla V/s State of Gujarat, (1967) 8 Guj LR 833, and there appears no good reason to depart from the view then taken by the High Court. Bhagwati, J who spoke for the Court had said, "The Panchayat Service contemplated under the Act is as much a civil service of the State as the State Service. The legislature by enacting the Act provided for the establishment of the Panchayat Organization of the State and for the efficient administration of the Panchayat Organization, particularly in view of the fact that a large part of the service personnel would be drawn from different sources and would, therefore, be heterogeneous in composition with widely differing scales of pay and conditions of service, the Legislature felt that it would be desirable to have a separate civil service of persons employed in the discharge of functions and duties of Panchayats with uniform scales of pay and uniform conditions of service and, therefore, with that end in view the Legislature provided for constitution of the Panchayat Service. All the provisions of the Act relating to the Panchayat Service point unmistakably and inevitably to one and only one conclusion, namely, that the Panchayat Service is one single service with the State as the master. The Panchayat Service is to be constituted by the State Government and its strength is also to be determined by the State Government. Section 203, sub-section(2) says that the Panchayat Service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadres hall be such as the State Government may by order from time to time determine..... "The provision of different cadres in the Panchayat Service and the transferability of persons employed in the Panchayat Service from a post in the district cadre to a post in any taluka in the

district and from a post in the taluka cadre to a post in any Gram or Nagar in the same taluka emphasize that the Panchayat Service is one single service with one master, namely, the State and each Panchayat is not the master of the servant employed in the discharge of its functions and duties. It is difficult to imagine that the Legislature should have provided for transfer of servants from one master to another..... "The mode of recruitment, the conditions of service and matters relating to appointments, transfers and promotions of persons employed in the Panchayat Service as also disciplinary action against them are all determined by the State Government and that is consistent only with the State being the master in the entire Panchayat Service. The mandatory provision for promotion from Panchayat Service to State Service which is required to be made in the rules also shows that both the services are services of the State. There could be no question of promotion from one service to another if the masters in the two services were different. Then it would be a case of termination of one service and appointment to another....."Then comes Sec.206 which provides for making of an order of allocation to the Panchayat Service....."This provisions relating to allocation of officers and servants under clauses (i) and (iii) does not contemplate any termination of service of such officers and servants or any fresh appointment to a new service. There is no concept of termination of the existing service and reappointment to a new service involved in the process of allocation; the concept is only of transfer from one service of the State to another without any break in the continuity of service and that clearly postulates that both services are under the same master, namely, the State. Section 206-A also reinforces this conclusion. It makes the initial allocation provisional and permits the State to review the allocation within a period of four years from 1st April, 1963..... "It is not possible to believe that the officer or servant could have been intended by the Legislature to be treated like a chattel which can be tossed about from one master to another. The only reasonable way of looking at the matter seems to be and that conclusion is inevitable on the language of these provisions, that the Panchayat Service is a civil

service of State like the State Service and since both the services are civil services of the State with the State as the master, an officer or servant can be allocated from the State Service to the Panchayat Service and re-allocated from the Panchayat Service to the State Service.....

"The conclusion which emerges from this discussion is that the Panchayat Service is a distinct and separate service set up for serving the Panchayat Organization of the State and it is as much a civil service of the State as the State Service. The State can have many services such as State Service, Police Service, Engineering Service etc. and Panchayat Service is one of them. In the Panchayat Service, as in the State Service, the State is the master and every officer or servant employed in the Panchayat Service is the servant of the State and not of the Panchayat under which he may be serving for the time being. The Panchayat Service is one single service with the State as the master."

We entirely agree with the above observations of the learned Judge.

32. It was argued that the High Court was wrong in issuing directions for equation of posts, revision of pay scales and payment of salaries. We do not think that the High Court committed any error in issuing the directions which were consequential to its findings. The High Court had directed the State Government to discharge its statutory duty to make orders for the equation of posts and to extend the benefits arising out of the reports of the two Pay Commissions, which benefits had been denied to the local cadre only. The obligation to make provision for the payment of salaries, allowances and other benefits to Government Servants did not cease by their being allocated to Panchayat Institutions notwithstanding that Section 204 places an obligation on the Panchayat under whom an officer or servant of the Panchayat Service may serve for the time being to meet the expenditure towards the pay, allowances and benefits available to such officer or servant. We do not have any doubt that the case was correctly decided by the High Court and that the appeal deserves to be dismissed with costs which we quantify at Rs.15,000/-."

4.1. From the facts of the case, it is clear that the petitioner was originally working with the then Mendarada Municipality which had been converted into Gram Panchayat and ultimately the petitioner was absorbed as an employee of the Gram Panchayat. Even as per the say of the respondents, the petitioner was absorbed in the Panchayat and has retired from Mendarada Gram Panchayat on 30.1.1984. Thus, it is clear that employees of the Mendarada Municipality are now known as the employees of Mendarada Gram Panchayat and they are not known as stated by the deponent in the affidavit-in-reply filed on behalf of respondent NO.1.

4.2. Apart from the said fact, while giving directions on 24.11.1998, it was made clear that the authority was to decide the case of the petitioner as per the directions issued in the judgment referred to hereinabove in the case of R.K.Soni (supra), yet the respondents have not considered the same and even they have not cursorily referred in the order at Annexure-A to the petition in the compilation and has proceeded on the footing that the petitioner was employee of the Municipality and, therefore, services of the petitioner can be considered only for the purpose of seniority and promotion and not for any other purpose. The said contention of the respondents is misconceived inasmuch as once a person is absorbed in the cadre, he is entitled for all benefits. It is not proper for the State Government to contend that the petitioner is not entitled for the benefits as an employee of the Panchayat.

5.1. In the result, this petition is allowed. The order at Annexure-A to the petition is quashed and set aside. The respondent No.1 is directed to treat the petitioner as an employee of the Panchayat in the district cadre.

5.2. The petitioner should be paid all the benefits which are available to an employee of the Panchayat pursuant to the judgment of R.K.Soni (supra). The petitioner being a senior citizen, respondent No.1 is directed to calculate the amount payable to the petitioner pursuant to the benefits available to the petitioner as an employee of the Panchayat within a period of four months from the date of receipt of the writ of this order and will pay the same within two months thereafter.

6. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.S.Jhaveri,J)

(pathan)